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GOVERNANCE APPROACHES TO EUROPEAN INTEGRATION

Tanja A. Börzel

Abstract

After twenty years of continuous deepening and widening, European integration has entered an era of recurrent crises. Most students of the European Union (EU) seem to agree that the constitutional equilibrium between intergovernmental and supranational institutions has changed. Some see “new intergovernmentalism” and “integration without supranationalisation” prevail. Others contend that we witness a series of functional and institutional spillovers empowering supranational institutions. This paper argues that governance approaches are particularly useful to address the puzzling counter-positions represented in the current debate about the ‘nature of the beast. They are better equipped to explore how and to what end institutional structures and processes have responded to the crises than mainstream integration theories. The paper starts with introducing the “governance turn” in EU studies as the attempt of EU scholars in the early 1990s to capture the nature of the EU. It then presents a typology that is based on a broad concept of governance as institutionalized forms of political coordination. The empirical part uses this typology to give an overview of the structures and processes of EU governance before applying it to the financial and the migration crises. The paper concludes with a discussion of the major challenges for European integration (theories) from a governance perspective, particularly with regard to managing current and preventing future crises.

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Image Credit: Martin Funck

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1. Introduction

After twenty years of continuous deepening and widening, European integration has entered an era of recurrent crises. The “Euro sclerosis” of 1970s and early 1980s stood for a decade of stagnation. Yet, even those who see crises as “the natural ways of development for the EU” (Àgh 2014: 5) acknowledge that the recent series of crises has attained a new quality challenging the very foundations of the project of European Integration. At the same time, European integration theories are alive and kicking – we see a revival of the debates in the 1990s of how to best capture the “nature of the beast” (Risse-Kappen 1996). Most students of the European Union (EU) seem to agree that the constitutional equilibrium between intergovernmental and supranational institutions has changed. Some see “new intergovernmentalism” (Bickerton et al. 2015; Puetter 2014) and “integration without supranationalisation” (Fabbrini/Puetter 2016) prevail. Others contend that we witness a series of functional and institutional spillovers empowering supranational institutions (Schimmelfennig 2014; Dehousse 2016; Bauer/Becker 2014; Genschel/Jachtenfuchs 2013). It is hard to deny that the nature of the beast is changing. This paper argues that, in order to address the puzzling counter-positions represented in the current debate about the ‘nature of the beast, governance approaches are particularly useful. For, the dichotomy of intergovernmentalism and supranationalism does not fully capture the ways in which the dynamics of European integration are shifting. By contrast, governance approaches are better equipped to explore how and to what end institutional structures and processes have responded to the crises.

Governance approaches reached EU studies in the early 1990s when students of European integration were looking for new ways of coming to terms with the EU being more than an international organization but less than a federal state (Wallace 1983). Conceptualizing the EU as a “system of multilevel governance” (Marks 1993), “network governance” (Kohler-Koch 1996), “new governance” (Hix 1998) or “experimentalist governance” (Sabel/Zeitlin 2010) appeared to be more fruitful in studying the political institutions and policy-making processes of the EU than using traditional approaches of both International Relations and Comparative Politics. Governance approaches do not reduce the EU to one particular type of international regime or political system; they allow to investigate how different forms of governance are combined and re-combined, and how effective and legitimate these different governance mixes are in tackling societal challenges such as preventing the break-down of banks, containing sovereign debt, generating economic growth, creating new jobs, promoting stability and democracy in the EU’s neighborhood, stopping transnational terrorism, or fighting climate change. Governance approaches are no grand theory of European integration. Unlike Liberal Intergovernmentalism (see Moravcsik/Schimmelfennig forthcoming) or Neofunctionalism (see Niemann et al. forthcoming), they have not developed assumptions about why and how actors seek to pool and delegate authority at the European level. Instead, the way in which governance approaches conceptualize the relationship between structures and processes, they fit into the mosaic of European integration a problem-oriented analysis of the institutionalized modes of coordination through which the provision of collective goods is regulated in the EU, by whom and to what effect. Governance has focused on regulatory practices rather than large structural changes (e.g. Bartolini 2005) or cultural practices, which is the concern of constructivism (see Risse forthcoming).

The paper proceeds in three steps. The first part introduces the “governance turn” in EU studies as the attempt of EU scholars in the early 1990s to capture the nature of the EU using concepts that are not unique

to the study of the EU but allow for comparisons with both international regimes and state federations. I then present a typology developed by Fritz Scharpf that is based on a broad concept of governance as institutionalized forms of political coordination. The second part uses this typology to give an overview of the structures and processes of EU governance. The third part, finally, applies the governance approach to the financial and the migration crises providing a more differentiated analysis that moves beyond the dichotomy of (new) intergovernmentalism and supranationalism. The paper concludes with a discussion of the major challenges for European integration (theories) from a governance perspective, particularly with regard to managing current and preventing future crises.

2. The Governance Turn in EU Studies

Theorizing the outcomes of European integration has been a constant challenge for EU scholars. Already in 1972, Donald Puchala complained that “more than fifteen years of de-fining, redefining, refining, modeling and theorising have failed to generate satisfactory conceptualisations of [...] ‘international integration’” (Puchala 1972: 267). The recognition that the EU was more than an inter-state organization but less than a state (Wallace 1983) had motivated scholars to declare its multifaceted nature unique (*sui generis*), which by definition precluded any comparison with other polities or political orders, both at the international and the domestic level (Warleigh-Lack/Rosamond 2010). With the “governance turn” (Kohler-Koch/Rittberger 2006), however, the parochialism in EU studies has started to fade. Similar to neo-institutionalism (see Pollack forthcoming) and constructivism (see Risse forthcoming), governance approaches helped EU studies away from the ‘*sui generis*’ perspective on European integration.

The emergence of governance concepts in International Relations (see Levi-Faur 2012: Part IX) offered a new perspective on the EU, which allowed approaching it in a more comparative way. Governance research took off from studies on EU policy-making in the field of structural policy, where supranational, national and subnational actors have to pool their competencies to formulate and implement EU policies (Marks 1992; Rhodes et al. 1996; Hooghe 1996). Multi-level governance approaches emerged as a critique of state-centric theories of European Integration, including Liberal Intergovernmentalism (see Moravcsik/Schimmelfennig forthcoming), for treating member states as unitary actors or neglecting that domestic actors can have independent access to the EU policy arena. With their initial focus on the role of regional and local governments in EU policy-making, multi-level governance shared with federalism intergovernmental relations as the main object of investigation (see Kelemen forthcoming). Yet, federalism attributes statehood to the different levels of government (*sic*), which neither the EU nor the regional and local authorities of the member states necessarily have. Moreover, multilevel governance and federalism equally neglect non-state actors. To recognize the role of business and civil society as EU policy actors and account for the proliferation of policy networks in the EU’s multilevel system, some authors coined the term network governance (Kohler-Koch 1999; Ansell 2000; Schout/Jordan 2005).

Early works on EU governance had focused on the nature of the beast as a whole (Kohler-Koch/Jachtenfuchs 1996; Jachtenfuchs 1997). The more recent literature on what is often referred to as “new modes of governance” (cf. Eberlein/Kerwer 2004; Héritier/Rhodes 2010) explores to what extent the EU has made use of

networks to govern its affairs in different policy sectors. The ‘governance turn’ in EU studies (Kohler-Koch/Rittberger 2006; Kohler-Koch/Larat 2009) is also reflected in the call of the White Paper on Governance, which the European Commission published in 2001 advocating more “modern forms of governance” based on networks as the most appropriate way of dealing with the challenges the EU is facing in the 21st century (Joerges et al. 2001).

Yet, multiple analyses of EU policy-making have revealed that the EU features far less network governance than the literature would make us believe. EU policies are largely formulated and implemented in multiple overlapping negotiation systems that can be described as multilevel policy networks. However, network relations that span across sectors and levels of government are not a *sui generis* character of the EU but constitute a core feature of the modern state (cf. Kooiman 1993; Slaughter 2004; Enderlein et al. 2010). More importantly, like its member states, the EU is characterized by different combinations of governance forms that cover the entire range from market to networks, to hierarchy. The next section will present a typology that allows to capture the governance mix in the EU and beyond – without expecting a certain mix to prevail. Future research will have to specify conditions under which what kind of mix is most likely to emerge and to regulate collective goods provision in an effective and legitimate way, respectively.

- Governance approaches capture the nature of the EU as being more than an international organization but less than a federal state facilitating comparisons with other multilevel polities;
- Governance approaches pay attention to the role of non-state actors beyond and below the nation state (supranational and subnational level).

3. What is Governance?

To state it upfront – governance is not a theory but an approach to (EU) politics. The governance concept has made quite a career, not only in EU Studies but also in other areas of political science (cf. Schuppert 2005; Bevir 2006; Enderlein et al. 2010; Levi-Faur 2012). It developed out of a criticism of state-centrism in the study of politics both within and beyond the nation state. Unlike government, governance is not wedded to the state; it provides a framework for comparing institutional settings, in which state and non-state actors at the global, regional, national and subnational level coordinate their actions in multilevel formal and informal networks. Following the work of Renate Mayntz and Fritz W. Scharpf, governance can be defined as institutionalized modes of coordination through which collectively binding decisions are adopted and implemented (Scharpf 1999; Mayntz 2004). Thus, governance consists of both structure and process. Governance structures relate to the institutions and actor constellations while governance processes are modes of social coordination by which actors adjust their behavior.

Research on governance usually distinguishes three different types of institutionalized rule structures: hierarchy, market (competition systems) and networks (negotiation systems). Within these structures, actors can coordinate their actions in hierarchical or non-hierarchical ways. Hierarchical coordination usually takes the form of authoritative decisions (e.g. administrative ordinances, court decisions). Actors must

obey. Hierarchical coordination or direction, hence, can force actors to act against their self-interest. They may be either physically coerced by the use of force or legally obliged by legitimate institutions (law). Non-hierarchical coordination, by contrast, is based on voluntary compliance. Conflicts of interests are solved by negotiations. Voluntary agreement is either achieved by negotiating a compromise and granting mutual concessions (side-payments and issue-linkage) on the basis of fixed preferences (bargaining), or actors engage in processes of non-manipulative persuasion (arguing), through which they develop common interests and change their preferences accordingly. Coordination in competition systems is also non-hierarchical. Actors compete over meeting certain performance criteria, to which they adjust their behavior accordingly. They are largely motivated by egoistic self-interests but pursue a common goal or some scarce resources of which they wish to obtain as much as possible by performing better than their competitors.

3.1. From Ideal Type to Governance Mix

While being analytically distinct, governance structures and processes are inherently linked since institutions constitute arenas for social coordination and regulate their access. It is important to keep in mind that governance structures do not determine but rather enable specific modes of coordination. Moreover, the institutionalized structures and their modes of coordination are ideal types that hardly exist in reality. Rather, we find combinations. Such governance regimes or governance mixes entail different combinations of ideal types, embedding one in the other by making one subordinate to the other.

Negotiation systems are often embedded in hierarchical structures. In the modern state, public and private actors almost always negotiate under a “shadow of hierarchy” cast by the ultimate authority of the state to unilaterally impose a decision if agreement fails (Scharpf 1997: 197-205). This is also true for political competition systems, since the state usually sets the legal rules of the game and intervenes to prevent market distortions or correct outcomes that violate public interests. In a similar vein, hierarchies and negotiation systems can operate in the shadow of the market. New Public Management, for instance, seeks to place public administrations in a political competition for good performance with each other and/or with private organizations (Benz 2007). Likewise, states or regions may compete in setting business-friendly regulation or taxation in order to attract economic investments and avoid competitive disadvantages, respectively (Héritier 1994). The institutional framework for political competition may not only be set by hierarchies but can also be negotiated. Thus, the World Trade Organization shapes the conditions for regulatory competition among states in the same way as international regimes, such as the Kyoto Protocol, the Non-Proliferation Treaty and the UN Anti-Torture Convention, set important parameters for state regulation in the field of environment, security or human rights.

Embeddedness implies a ranking between the different institutionalized rule structures. The dominant rule structure sets or changes the rules of the game for the subordinate rule structure and entitles actors to intervene in order to correct or substitute policy outcomes. As a result, the primary rule structure casts an institutional shadow, which has a significant influence on the behavior of actors in the secondary rule structure.

- Governance is not a theory of European Integration. It provides problem-oriented analysis of EU policy-making.
- There are different types of governance that combine into different mixes or governance regimes.

3.2. *Varieties of EU Governance*

Unlike suggested by descriptions of the EU as network governance, multilevel governance or “directly-deliberative polyarchy” (Sabel/Zeitlin 2010), EU governance heavily relies on hierarchy or the shadow cast by it (cf. Börzel 2010). To map the varieties of EU governance, the following analysis draws on the governance typology developed by Fritz Scharpf (2001, 2006), which is modified to more systematically accommodate the role of non-state actors and the embeddedness of governance forms.

The most prominent governance type in the EU has been supranational joint decision-making or what is better known as the Community Method (Dehousse 2011). This form of intergovernmental negotiation in the shadow of hierarchy allowed overcoming member state resistance against the harmonization of regulatory standards in the creation of the internal market. Framework legislation jointly adopted by the Council and the European Parliament sets common goals and basic rules and procedures leaving it to member states to implement their own policies. Compliance with EU framework legislation is monitored by the European Commission and the European Court of Justice (ECJ), while enforcement ultimately lies with the member states. The subsequent extension of the EU’s regulatory competencies and qualified majority voting since the Single European Act 1986 facilitated the use of supranational joint decision-making. The Lisbon Treaty of 2007 made it the default mode of governance, applying to almost all policies of the Internal Market and in the framework of justice and home affairs.

The strongest form of hierarchical coordination is entailed in supranational centralization or supranational delegation (Pollack 1997; Franchino 2007), in which the member states delegate political authority to independent or non-majoritarian supranational agencies. The European Commission and the European Central Bank can set and enforce legally binding decisions without requiring the consent of the member states. Supranational centralization does not only apply to competition and monetary policy. Since the 1990s, the Council has increasingly tasked the Commission with the adoption of EU laws (König et al. 2012). Such delegated or tertiary legislation (Junge et al. 2015) can be adopted by the Commission under the implementing powers given to it by the Treaties, or under the delegated powers provided by earlier legal acts. It usually involves further elaboration or updating of standards and technical issues. They are passed through the so-called Comitology procedure, which involves committees consisting of member state representatives with voting power and the Commission, which sets the agenda and chairs the committee meetings. Decision-making happens behind closed doors and is in stark contrast to the adoption of legal acts under supranational joint decision-making; the European Parliament has the right to comment on whether a draft exceeds the implementing powers of the Commission but has no power to amend or reject the directive.

Political competition in the shadow of hierarchy provides an alternative to harmonization by supranational joint decision-making and supranational centralization. The most prominent example is the principle of mutual recognition established by the ECJ in 1979.¹ It allows high-regulating member states to maintain their regulatory standards but prevents them from using those standards as non-tariff trade barriers against low-regulating member states. It constitutes the framework for a moderate regulatory competition between the member states in the shadow of supranational hierarchy since EU law mandating the opening of national markets generates competitive pressure not only on domestic companies but also on public regulation within the member states (Sun/Pelkmans 1995: 68f). At the same time, the principle of mutual recognition constrains the dynamics of a race to the bottom by requiring that states (implicitly) agree on minimum standards. It thereby significantly expands the shadow of supranational hierarchy in the single market since the dismantling of non-tariff barriers does not require the consent of the member states — unlike the harmonization of national standards at the EU level. This form of “horizontal transfer of sovereignty” (Nicolaidis/Shaffer 2005) also travelled to other areas where it serves as a functional equivalent to supranational joint decision-making. It has been increasingly invoked in justice and home affairs, for example, in the area of asylum and immigration policy or criminal law, where the national regulations of member states are too divergent to allow for agreement in the inter- and transgovernmental negotiation systems (Schmidt 2007). The principle of mutual recognition facilitates cross-border law enforcement since different national standards with regard to criminal codes can no longer obstruct judicial cooperation between Member States (Lavenex 2007).

Inter- and transgovernmental networks help supranational, national and subnational public actors to informally coordinate their interests and reach agreements through the exchange of resources and arguments. The shadow of supranational hierarchy generated by majority rule in the Council and judicial review of the ECJ significantly influences the dynamics and outcomes of inter- and transgovernmental negotiation systems. On the one hand, the perceived threat of a majority decision in the Council increases the willingness of governmental actors to come to an agreement. On the other hand, inter- and transgovernmental actors have to make sure that their agreements are likely to stand up to scrutiny by the Commission and the ECJ. The parameters set by their interpretation of European law are not always oriented towards mere market liberalization and free competition but may also support market-correcting policies. The “dual mechanism of anticipated reactions and the fleet in being” (Scharpf 1997: 200) is particularly prevalent in the single market but also has an impact on other policy sectors, such as the environment, social policy, and tax policy (Héritier/Lehmkuhl 2008).

Transgovernmental networks also help to fill the “regulatory gap” at the EU level, when member states have been reluctant to transfer regulatory authority to the EU level and instead delegated them to independent regulatory agencies or ministries at the national level (Coen/Héritier 2006). National regulatory authorities have formed informal networks to exchange information and develop “best practice” rules and procedures to address common problems (Coen/Thatcher 2008). While these regulatory and operational networks may be open to the participation of private actors (e.g. providers and consumers), they are transgovernmental rather than transnational in character (Eberlein/Grande 2005). Even if the member states have not delegated regulatory competencies to the EU, transgovernmental networks operate under the

¹ The Judgment of the Court of 20 February 1979 is known as *Cassis de Dijon* (C-120/78).

shadow of supranational framework regulation, which “regulates the regulators” (Eberlein/Grande 2005: 98) by setting minimum requirements for the regulatory regimes in the member states (Levi-Faur 1999).

Where the shadow of supranational hierarchy is absent, member states rely on intergovernmental coordination, most prominently in the fields of External and parts of Internal Security. The (European) Council usually decides by unanimity and shares the right of initiative with the Commission. The Parliament is at best consulted and the ECJ has only limited power of judicial review. The areas of intergovernmental coordination, which the member states explicitly sealed against the shadow of supranational hierarchy, largely correspond to the ideal type of (public) negotiation systems. European decisions rest on the voluntary coordination of the member states (unanimity or consent) and often do not have legally binding character (soft law). They are prepared and accompanied by intergovernmental networks, which act free from the shadow of hierarchy. This is not only true for the foreign, security and defense policy and parts of justice and home affairs, but also for selected areas of the Internal Market where the EU has no or only very limited competencies and the influence of the supranational troika (Commission, Parliament and Court) is severely restricted (parts of social policy, macroeconomic and employment policy, research and development, culture, education, taxation).

A slightly modified version of intergovernmental coordination outside the shadow of hierarchy is the Open Method of Coordination (OMC). OMC is to coordinate national policies in areas where member states have been unwilling to grant the EU political authority and additional spending capacity, particularly in the field of economic and social policy (Hodson/Maher 2001; Daly 2006). In the meantime, OMC has traveled beyond Lisbon and is applied in justice and home affairs (Caviedes 2004; Lavenex forthcoming), health policy (Smismans 2006), environmental policy (Lenschow 2002; Holzinger et al. 2008) and tax policy (Radaelli/Kraemer 2008). OMC works through inter- and transgovernmental negotiations, in which the member states strike voluntary agreements on joint goals that are not legally binding. In order to realize these goals, the member states develop national action plans whose implementation is monitored and evaluated on the basis of common indicators. The member states shall compete for best practices that are to trigger processes of mutual learning. By outperforming other member states, they gain a competitive advantage in attracting or keeping economic activities. OMC is in principle open for the participation of non-state actors. Yet, in practice, it has largely taken the form of political competition in the shadow of inter- and transgovernmental negotiations with hardly any involvement of private actors, neither in the formulation of joint goals at the EU level nor in their implementation at the national level (Hodson/Maher 2001; Héritier 2003; Armstrong 2003; Rhodes 2005: 295-300; Borrás/Jacobsson 2004: 193-4; Büchs 2008).

There are a number of other varieties of EU governance, which, however, do not play a prominent role. For instance, the Social Dialogue is a form of private self-coordination in the shadow of supranational hierarchy. In selected areas of social policy, the social partners have the right to conclude agreements, which can be turned into European law (Falkner 1998). While this form of Euro-corporatism is unique, the negotiation procedure under the Social Dialogue has hardly been invoked (Rhodes 2005). Other forms of delegated or regulated private self-regulation are equally rare. Voluntary agreements at the national level abound, but they have been hardly used by European business organizations to prevent EU regulation. If at all, they are found in the area of environmental and consumer protection (cf. Calster/Deketelaere 2001; Héritier/Eckert 2008).

Interestingly, despite being used a way to describe the EU, proper network governance (public-private negotiations) is hard to find. Formal and informal EU-institutions often provide for the consultation of economic and societal interests by the Commission, the Parliament and the representatives of the member states. In some cases, the Treaties even allow for the participation of non-state actors in EU negotiation systems on equal basis. Most prominently, the partnership principle in structural policy explicitly requires the involvement of private actors in inter- and transgovernmental negotiation systems. The Treaties prescribe the involvement of the social partners – beyond the consultation of the Economic and Social Committee – for the management of the European Social Fund. Their representatives are members of the management committee, in which the member state governments are represented as well, and which is chaired by the European Commission. There are also several EU regulations specifying the partnership principle and providing for the participation of the social and economic partners at the various stages of programming under the Social and the Regional Development Funds. Moreover, a regulation extends the partnership principle to include civil society. The extent to which private actors are actually involved is contested in the literature and varies significantly across the member states. The concept of multilevel governance emerged from studies of structural policy, but it has focused on the role of local and regional governments (Marks 1992; Hooghe 1996; Bache/Flinders 2004; Bachtler/Mendez 2007). Private actors have hardly been systematically considered. It seems that economic and social partners still have a marginal role compared to national, regional and local governments. Furthermore, while the partnership principle may seek to encourage the building of intermediate negotiation systems, they would always operate in the shadow of hierarchy, since private actors do not have a formal say in the decisions taken. Nor has the state reduced its role to “a partner and mediator” (Kohler-Koch 1996: 371) or “broker” (Ansell 2000: 310). Governmental actors have largely defended their position as the central policy-makers (Anderson 1990; Rhodes 1997). In any case, there is certainly not enough empirical evidence to speak of network governance in structural policy.

In sum, the EU features a governance mix that is not unique but different from both any international organization and modern state (see Table 1). While the EU lacks the monopoly of force, supranational institutions can resort to hierarchical coordination to legally oblige member states against their interests. Member state governments do not monopolize EU policy-making but share powers with the European Commission, the European Parliament or (trans-) national regulatory authorities. Private actors do play a role but political decisions are largely taken and implemented by governmental actors at multiple levels of government. Thus, the EU is governed in, rather than by networks, and these networks are not only managed but clearly dominated by public actors. Finally, political competition as a mode by which the member states seek to coordinate their policies is complementing inter- and transgovernmental negotiations operating under and outside the supranational shadow of hierarchy. The principle of mutual recognition and the Open Method of Coordination have gained importance in an ever more heterogeneous EU, where harmonizing national policies by supranational centralization and supranational joint decision-making is increasingly difficult.

Table 1: Varieties of EU Governance

<i>institutionalized rule structures</i>	HIERARCHY			NEGOTIATION SYSTEM		COMPETITION SYSTEM
<i>modes of coordination</i>	hierarchical (asymmetrical influence)			non-hierarchical (mutual influence)		Non-hierarchical (mutual adjustment)
	AUTHORITATIVE DECISION			AGREEMENT VIA BARGAINING OR ARGUING		COMPETITION
<i>governance mix (embeddedness)</i>		negotiation in the shadow of hierarchy	competition in the shadow of hierarchy		competition in the shadow of negotiation	
<i>actors</i>						
public	supranational centralization (supranational/hierarchical mode)	supranational joint decision-making - majority - unanimity (joint decision mode)	mutual recognition	intergovernmental cooperation (intergovernmental mode)	open method of coordination – governmental	regulatory-/tax competition
public-private		private self-coordination in the shadow of hierarchy		network governance	open method of coordination – intermediate	
private				private interest government		
FORMS OF GOVERNANCE (INSTITUTIONALIZED FORMS OF POLITICAL COORDINATION) IN THE EU						

Source: Börzel 2010.

- The EU can govern hierarchically.
- EU governance mostly relies on negotiation and competition in the shadow of supranational hierarchy.

4. EU Governance of Crisis: More of the Same

Some EU scholars argue that the EU has been in crisis for the past 40 years starting with the Eurosclerosis in the 1970s and early 1980s. Crisis arose whenever the member states resisted (further) transfer of political authority to the EU level or opposed EU interference into their domestic affairs even though joint action at the EU level appeared to be clearly needed (Tömmel 2016). In the attempt to “escape from deadlock,” the EU developed new modes of governance, such as the Open Method of Coordination (Héritier 1999: page number). Overall, however, the member states have institutionalized different combinations of competition and negotiation in the shadow of supranational hierarchy.²

The Economic and Monetary Union (EMU) combines supranational centralization in the form of delegating the authority to make monetary policy to the European Central Bank (ECB) with the intergovernmental coordination of national economic policies in the Euro-group to safe-guard macro-economic stability in

² For a more detailed analysis, see Börzel (2016).

the shadow of the Stability and Growth Pact and the Excessive Deficit Protocol Procedure, on the one hand, and the competition of national economic systems in the Internal Market, on the other. Asylum and migration policy mixes supranational decision-making to set common standards on the treatment of asylum seekers and refugees in the Schengen passport-free area and regulatory competition in the shadow of supranational hierarchy to facilitate cross-border law enforcement.

Both governance regimes have been criticized for member states giving up rather than transferring political authority to the EU level. Monetary union deprives Euro countries of key instruments of macroeconomic management without providing the EU e.g. with the ability to contradict the effects of cheap credit availability resulting from the uniformity of ECB interest rates (Scharpf 2015, 2016; Streeck/Elsässer 2016). In a similar vein, the Schengen states abolished internal border controls without creating a common external border control and a common administration to handle asylum seekers and refugees. Despite these birth defects, however, the Euro and Schengen appeared to work well enough.

Warnings that the governance mix of EMU failed to ensure sufficient convergence among surplus and deficit countries were ignored (Bayoumi/Eichengreen 1993); Scharpf 2015; Streeck/Elsässer 2016), demands by Spain, Italy, and Greece for burden-sharing dismissed (Thielemann/El-Enany 2010). The Stability and Growth Pact and the Excessive Deficit Procedure Protocol were to impose fiscal discipline on the member states to prevent spillover effects from unsustainable national deficits. Re-admission agreements with neighboring countries were to limit the number of asylum seekers to be handled by the member states in charge of protecting the EU's external borders.

Only when the EU was hit by the collapse of US real estate banks in 2008, and after Libya and Syria broke down in 2011, respectively, did the Member States have to acknowledge the deficits of the governance mixes. Since the EU lacked the political authority for a forceful response to both crises, Member States have resorted to unilateral action – bailing out their domestic banks, stopping the registration of refugees and asylum seekers, passing them on to their neighbors, taking them on without registration, and closing off their borders.

4.1. Rescuing the Eurozone: EU Crisis Management by Default

Since EMU and the Schengen regime have deprived the Member States of core instruments to mitigate external asymmetric shocks, unilateral action has done little to manage the crises. Consequently, and rather reluctantly, Member State governments sought to find common solutions at the EU level. To prevent the breakdown of the Eurozone and protect the common currency against future challenges, the Euro countries established a whole set of supranational institutions which constitute the most far-reaching deepening of European integration since the creation of the EMU in 1999 – without even touching the Treaties. Delegating political authority to non-majoritarian supranational institutions may weaken supranational joint decision-making. Yet, claims that the EU experiences a “new intergovernmentalism” with decisions increasingly made through intergovernmental forms of decision-making (Puetter 2014; Bickerton et al. 2014) or the creation of an “intergovernmental union” where member states “stubbornly resist further

supranationalism” (Puetter 2012: 168; cf. Fabbrini 2016) may be overstated (cf. Schimmelfennig 2015). Rather, the Fiscal Compact, the European Stability Mechanism, the Banking Union, the Macro-economic Imbalance Mechanism, and the European Semester reinforce supranational centralization (Schimmelfennig 2014; Ioannou et al. 2015; Nugent/Rhinard 2016; Bauer/Becker 2014; Dehousse 2016). Moreover, inter- and transgovernmental coordination of national economic, fiscal and budgetary policies has been placed under a stronger shadow of supranational hierarchy.

There is no doubt that the European Council has played a key role in making decisions responding to the crisis (Bickerton et al. 2014; Puetter 2014; Puetter/Fabbrini 2016). However, this does not necessarily imply a weakening of supranational institutions. The Commission was tasked to transform member state decisions into technical proposals for legislative measures, including the Six Pack and the Two Pack adopted by supranational joint decision-making, i.e. the ordinary or special legislative procedure. The Macro-economic Imbalance Mechanism and the European Semester substantially strengthen the budgetary and macro-economic surveillance capacities of the Commission (Savage/Verdun 2016; Bauer/Becker 2014). Tightening the rules for fiscal discipline of the Stability and Growth Pact and giving the Commission the power to monitor Member State fiscal activities and sanction excessive deficits and debts cast a substantial shadow of supranational hierarchy over the inter- and transgovernmental coordination of economic, fiscal, and budgetary policies that formally remain the political authority of the Member States; but supranational rules and surveillance severely limit Member State discretion.

In a similar vein, the Banking Union creates supranational banking rules (single rulebook) and centralizes banking supervision in the hands of the ECB to avert market failure caused by banks. The so-called Single Supervisory Mechanism provides for the monitoring and enforcement of a common regulatory framework formed by a series of directives, adopted under supranational decision-making. It also includes the Capital Requirements Regulation and Directive implementing the Basel III capital requirements for banks, the Deposit Guarantee Scheme Directive regulating deposit insurance, and the Bank Recovery and Resolution Directive, which establishes the Single Resolution Mechanism and the Single Resolution Fund to regulate and finance the restructuring of troubled banks (de Rynk 2016). As the European Commission, the ECB obtained comprehensive surveillance powers, which comprise full access to bank data and the right to carry out onsite inspections. The new system takes away Member State authority for financial supervision under the Lamfalussy Process, which provided at best a “light touch” regulation (Quaglia 2014: 65).

Strengthening supranational centralization and placing inter- and transgovernmental coordination under a shadow of supranational hierarchy may be a rupture with the past approach of centralized monetary and decentralized economic policy (de Rynk 2016). Yet, it is fully in line with the EU’s default strategy to deepen integration in the face of member state resistance against a transfer of political authority to the EU level by supranational centralization (cf. Chalmers et al. 2016). This also applies to the changing role of the ECB, which similar to the Commission, has transformed from a technocratic supranational agent with a very specific mandate into a political actor taking monetary decisions with redistributive consequences, such as quantitative easing or purchasing government debt on secondary markets, while being shielded against political and electoral accountability (Chang 2016: 493).

The changes in the EU’s governance mix are also a far cry from calls for a genuine social and political Union,

which would have the legal and fiscal authority to protect and support specific social rights (Habermas 2013). The incremental adjustments of the previous governance mix not only raise questions about its effectiveness in preventing future crisis (Scharpf 2016). They also heighten problems of legitimacy since supranational centralization and intergovernmental coordination in the shadow of supranational hierarchy do hardly provide for the democratic control and participation of the German Constitutional Court demands and EU scholars deem necessary to counter the increasing Euroskepticism among EU citizens (Fasone 2013; Risse 2015; Hix 2015).

Whether the reform of the existing governance mix will suffice to protect the Eurozone against future external shocks is beyond the scope of this paper. What is of interest here is that the default strategy of the EU to respond to the migration crisis by resorting to supranational centralization and inter- and transgovernmental coordination in the shadow of supranational hierarchy has not worked.

4.2. Sacrificing Schengen? Intergovernmental Coordination defying the Shadow of Hierarchy

Given the seeming success of integration by stealth in managing the financial crisis, the Commission and the member states resorted to the same strategy to cope with the historical influx of migrants. Yet, this time, they have not been able to use supranational centralization to depoliticize controversial decisions by delegating them to non-majoritarian supranational institutions.

Interestingly, the governance failure of the EU in coming to terms with the unprecedented migration flows is not only and maybe not even primarily related to deadlock in EU decision-making. Between the end of September 2015 and the end of April 2016, the Member States agreed on a whole set of joint measures aiming at “sharing the responsibility” (Council of the European Union 2015) for the refugees who had already entered the territory of the EU, on the one hand, and managing future migration flows, on the other. Action was taken by supranational joint decision-making, drawing on the EU’s legal framework for a common asylum and migration policy. Core measures include several billion Euros for various funds for supporting member states and third countries in managing and accommodating migration flows; the adoption of a common list of safe countries of origin; the relocation of 120,000 ‘persons in clear need of international protection’; the establishment of additional hot spots in Italy and Greece; and the reinforcement of the three EU agencies operating on migration-related issues (FRONTEX, the European Asylum Support Office (EASO) and Europol). The EU also created a new military operation (EUNAVFOR MED) in the Mediterranean Sea in May 2015, and tripled the budget for its already existing operations, Triton and Poseidon in December 2015 (Börzel 2016).

These are only the most important measures, the vast majority of which the EU adopted in less than three months under EU primary and secondary law. Supranational joint decision-making, however, has ultimately failed to reach a fair sharing of responsibility for “registering and processing people in need of protection and returning who are not to their home countries or safe third countries they are transited through” (European Commission 2016: 3). Maybe, more than € 10 billion and a series of legal measures

are insufficient to accomplish these goals. However, we will probably never know because member states have squarely refused to put most of them into practice. They have not met their various funding pledges, nor have they sent additional experts for FRONTEX or EASO. Most importantly, at the time of writing only a little more than 24,600 of altogether 160,000 refugees have been relocated from Greece and Italy.³

In the absence of a working European solution, governments implemented national measures tightening border controls. Moreover, the German government negotiated an agreement between the EU and Turkey introducing a 'one in, one out' policy. In exchange for each 'irregular' migrant that Turkey takes back from Greece, the EU will resettle one Syrian refugee from Turkey. The EU allotted altogether € 6 billion to help Turkey provide temporary protection for Syrians. Up to 72,000 Syrians are to be resettled according to a relocation scheme agreed by the EU for the 120,000 refugees. Only around 4,000 refugees have been sent back from Greece to Turkey and an equivalent number of Syrians resettled in the EU.⁴ The number of new refugees arriving on Greek islands dropped sharply. However, over 60,000 are stranded already in the country after the closure of the Western Balkan route. Greek authorities are overwhelmed with processing their applications for asylum and providing the applicants, who have the right to appeal in court, with a place to stay. Greece is still in the process of establishing the necessary administrative and legal procedures and turning its already ill-equipped hotspots (asylum processing facilities) into proper reception facilities and detention centers. The EU and the other member states have promised to provide 2,300 experts and will foot most of the € 300 million the operation is estimated to cost. Yet, the legal responsibility and administrative burden has been again placed on Greece instead of sharing them equally among the member states. Moreover, it remains to be seen how many of the member states will be willing to accept Syrian refugees to be resettled from Turkey since they have not even complied with their commitments under the EU internal relocation scheme. A month before its expiration, Germany, for instance, had accepted only 6,927 refugees of the 27,536 it had agreed to in September 2015. France had taken 4,100 out of 19,714. Austria, Hungary, and Poland had refused to receive any refugees.⁵

Finally, it is unclear what will happen if the refugee flows return to their previous routes through Libya into Italy. While the number of migrants crossing the Aegean from Turkey into Greece has declined, those crossing to Italy have more than doubled since the EU-Turkey agreement entered into force. Greek courts have stopped to accept Turkey as a safe country, to which migrants can only be returned under EU law further tainting any perspective of the EU to conclude a similar agreement with Libya. Austria has installed tighter checks on its border with Italy in anticipation of a surge in migrants. So has Germany on the Austrian-German border.⁶

3 European Commission 2017: EU Nachrichten, in: https://ec.europa.eu/germany/sites/germany/files/eu_nachrichten_13_2017web_0.pdf; August 2, 2017.

4 European Commission 2017: Relocation and Resettlement: Member States need to build on encouraging results, in: http://europa.eu/rapid/press-release_IP-17-218_en.htm; March 30, 2017.

5 Member States' Support to Emergency Relocation Mechanism, in: https://ec.europa.eu/home-affairs/sites/home-affairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf; May 19, 2018.

6 Centanni, Evan 2017: Map: Which Schengen Borders Are Closed to Passport-Free Travel in August 2017?, in: <https://worldview.stratfor.com/article/map-which-schengen-borders-are-closed-passport-free-travel-august-2017>; August 19, 2017.

In response to member states' blatant non-compliance with existing EU laws and decisions, the Commission has – once again – pushed for supranational centralization. Next to turning the EASO into the “European Union Agency for Asylum” with new powers to monitor and evaluate member states' policies, the original proposal called for the creation of an EU Border and Coast Guard Agency (EBCG) to replace the European Agency for the Management of Operational Cooperation at the External Borders of the member states of the EU (FRONTEX; European Commission 2015). It should monitor the EU's external borders to ensure that EU legal standards for border management are implemented. Most importantly, similar to the European Central Bank under the Single Supervisory Mechanism, the EBCG would be able to require member states to take timely corrective action. In case of failure to do so, the EBCG would be empowered to intervene directly, without the consent of the member state concerned. Finally, a European Return Office, created within EBCG, would deploy European Return Intervention Teams to return illegally staying third country nationals. The proposed distribution key system would have to be activated whenever a member state faced a disproportionate number of asylum applications, i.e. more than 150 percent of its capacity). It should reflect the relative size, wealth and absorption capacities of member states. Member states refusing to accept asylum seekers should have to pay a € 250,000 “solidarity contribution” to the hosting member state. The computerized relocation would break with the core rule of the Dublin regime that the member state through which asylum seekers and refugees first entered the EU have to handle their applications on behalf of all other member states. If the so-called Dublin III Regulation was amended by a new regulation, national parliaments would not even have to give their consent (European Parliament/European Council 2013).

At the time of writing, it is highly questionable, however, whether the Council will adopt the Commission's formal proposal for the supranational centralization of the Common Asylum System, even if only a qualified majority is necessary. The European Border and Coast Guard was launched in Bulgaria in October 2016. However, it merely pools member state resources and assist those countries most affected by the refugee influx. Slovakia and Hungary already filed court cases against two-year mandatory relocation quota. They reject even a voluntary scheme. BREXIT, finally, has fueled demands of not only Central and Eastern European member states to keep asylum and immigration rules in national competencies.

To conclude, the financial and the migration crises have not led to more or new forms of intergovernmentalism. The member state governments have played a prominent role in managing the crises. However, they strengthened the regulatory powers of supranational institutions for the Eurozone as neofunctionalism would have expected it. The neofunctionalist strategy of strengthening hierarchical governance to cope with the relocation of refugees has failed due to the increasing politicization of EU affairs in the member states (Börzel/Risse 2017; see also Risse forthcoming). Yet, member states have gone it alone rather than forged intergovernmental agreements in the Council as proposed by new intergovernmentalism.

- The EU's ultimate response to the financial crisis was not “new intergovernmentalism” but more supranational centralization and intergovernmental coordination in a stronger shadow of hierarchy.
- Similar attempts at strengthening hierarchical governance in the EU in the migration crisis have failed.

5. From EU Governance of Crisis to Crisis of EU Governance

This paper sought to demonstrate governance approaches provide a more differentiated analysis of European integration. Conceptualizing the EU as a political system that combines different varieties of governance not only enables EU scholars to move beyond the dichotomy of (new) intergovernmentalism and supranationalism. It also allows them to overcome the parochialism of EU studies by facilitating comparisons of the EU with other systems of multilevel governance at the national and international level. Analyzing reconfigurations in the EU's governance mix in response to two of the most severe crises the EU has experienced so far, governance approaches reveal that it is not so much the constitutional equilibrium between intergovernmentalism and supranationalism that has altered. Rather, the nature within the two logics of EU policy-making has changed. The deepening of financial and fiscal integration strengthened supranational centralization and placed intergovernmental coordination in a strong shadow of supranational hierarchy. Similar attempts to centralize political authority for migration and asylum policy in non-majoritarian supranational institutions have failed so far. However, the measures agreed upon by the member states have empowered executive agencies, such as the EU's Border Agency, which became the European Coast and Border Guard. The EU's failure to overcome stagnation may well result in disintegration since intergovernmental coordination defying the supranational shadow of hierarchy has also failed so far in producing a viable solution to tackling the refugee challenges.

Governance is an approach, which has not much explanatory power of its own. It has to draw on (European integration) theories to explain why the financial crisis resulted into more integration whereas the migration crisis has only shown stagnation and even some signs of disintegration (cf. Wiener et al. forthcoming). However, governance draws attention to a key challenge, EU governance has to tackle in the future, if European integration is to remain the most successful project of peace and prosperity in modern times: The EU's capacity to manage current and future crises and, hence, its power of attraction on which its role in the world relies, crucially depend on a new governance mix that moves beyond regulation.

The combination of negotiation and competition in the shadow of supranational hierarchy has prevented and corrected market failures (Eckert 2011; Finger 2011). Yet, what defines the EU as a "regulatory state" (Majone 1997) has clear limits when dealing with issues of redistribution. In (re-)distributive policy areas, such as taxation of mobile capital, employment, social policy, or economic governance, the member states have been very reluctant to resort to supranational joint decision-making and supranational centralization in order to counteract politically undesired outcomes of the Internal Market.

Regulatory policies have redistributive implications (Wilson 1980). Yet, these are mostly felt at the implementation stage and concealed by imposing the same obligations on all member states (Majone 1994). As a result, member states have found it less difficult to transfer regulatory authority to the EU level and to agree on common regulatory policies and place intergovernmental coordination in the Euro group under a stronger shadow of hierarchy. Not surprisingly then, the creditor countries have framed the financial crisis as a regulatory issue, a problem of too lenient fiscal and budgetary rules and too lax enforcement in the debtor countries (Chang 2016: 495). The single currency largely deprives the member states of their core instruments for national macroeconomic stabilization. The solution, hence, is not fiscal transfer but compliance with stricter austerity rules and structural reforms enforced by the Commission and the ECB, which

will enable debtor countries to become self-sufficient. Financial assistance is only a temporary means to buffer adjustment costs and help build reform capacities. The delegation of new regulatory authority to non-majoritarian supranational institutions empowered the Commission and the ECB to take decisions with redistributive consequences while being shielded against political and electoral accountability (Chang 2016: 493; cf. Schimmelfennig 2014; Chalmers et al. 2016). The result is not more intergovernmentalism or supranationalism but a strengthening of state or executive actors at the EU and the member state level at the expense of democratic control.

Likewise, member states have justified the re-introduction of border controls or complete closure of borders by the non-compliance of others with the EU's regulations on migration and asylum – failing to register refugees and migrants when they first enter the EU, not attending to their basic human needs, refusing to receive mandatory relocations, delaying funding and experts to process asylum requests, or not effectively protecting the EU's external borders. Indeed, all member of the Schengen agreement have repeatedly violated the directives and regulations that form the core of the EU's asylum and migration regime (Börzel 2016). In response to member states' blatant non-compliance, the Commission has pushed for more regulatory authority creating or empowering non-majoritarian supranational agencies with monitoring and sanctioning powers.

Yet, (more) regulatory governance is not only inadequate to deal with redistributive conflicts (Majone 1994). Seeking to 'mask' the allocation of adjustment costs or refugees as a regulatory issue undermines both the effectiveness and the legitimacy of EU governance. The EU's failure in the financial crisis to recognize the need for a different governance mix to tackle redistribution which does not rely on supranational centralization and limits supra national joint decision-making has further politicized the EU as a system of governance. Its democratic credentials are not only questioned by populist politicians and citizens rallying against the socio-economic effects of the financial crisis (Börzel 2016; Risse forthcoming). The constitutional courts of several member states have also reserved the right to review and, if necessary, nullify changes in the EU's governance mix (Fabbrini 2014; Joerges 2016). The EU's attempt to depoliticize redistributive issues through supranational centralization backfired causing a populist backlash, which not only constraints but increasingly impedes the member state governments in sharing responsibilities with regard to the refugee flows (Börzel/Risse 2017).

So far, the member states have been unwilling to give the EU some real tax and spending capacity to tackle issues of redistribution. If member states continue resisting redistributive measures, such as Eurobonds, an EU-wide unemployment insurance or mandatory relocation quota, which they will ; they will also have to become more flexible in applying and enforcing uniform and rigid EU rules that are meant to create a common or Internal Market and are ill-suited to tackle issues of redistribution that arise in the integration of ever more diverse national markets.

The key challenge for governance approaches, hence, is to make the next 'turn' in EU studies and come up with new forms of governance that effectively address the EU's most pressing (redistributive) problems without undermining its democratic legitimacy.

- The EU's dominant governance mix is inappropriate to deal with some of the EU's most pressing problems.
- The EU needs a new governance mix that can effectively deal with redistributive issues without undermining democratic legitimacy.

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